

MINUTES

MONTANA SENATE 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN MIKE WHEAT**, on April 6, 2005 at 4:30 P.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Mike Wheat, Chairman (D)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jon Ellingson (D)
Sen. Jeff Mangan (D)
Sen. Dan McGee (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Jim Shockley (R)

Members Excused: Sen. Jesse Laslovich (D)

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Mari Prewett, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: None.
Executive Action: HB 782 and HB 747

SEN. SHOCKLEY had an article on Tort Reform distributed to the Committee. This article is attached as Exhibit 1. **SEN. SHOCKLEY** remarked that the article seemed like a balanced approach to the subject and he thought the Committee might like to read it.

[EXHIBIT\(jus73a01\)](#)

EXECUTIVE ACTION ON HB 782

Motion: **SEN. MCGEE** moved that HB 782 BE CONCURRED IN.

Discussion:

CHAIRMAN WHEAT stated that he had an amendment which **SEN. MCNUTT** had forgotten to have placed on the bill. This amendment is attached as Exhibit 2.

[EXHIBIT\(jus73a02\)](#)

Motion: **SEN. WHEAT** moved that AMENDMENT NO. HB078202.AKL BE ADOPTED.

Discussion:

CHAIRMAN WHEAT explained that the amendment changed the appropriation of \$49,000 for each year to \$98,000 for the biennium. He went on to say that the amendment would give more flexibility to the Attorney General's Office.

Vote: Motion that AMENDMENT NO. HB078202.AKL BE ADOPTED carried 12-0 by voice vote with **SEN. LASLOVICH** voting aye by proxy.

Motion: **SEN. PERRY** moved that AMENDMENT NO. HB078203.AKL BE ADOPTED.

Amendment No. HB078203.akl is attached as Exhibit 3.

[EXHIBIT\(jus73a03\)](#)

Discussion:

CHAIRMAN WHEAT asked if this was the agreed upon amendment by all of the parties. The parties indicated that it was by nodding.

SEN. CROMLEY asked what parties. **CHAIRMAN WHEAT** explained the parties were those individuals that had been present at the hearing on the bill.

Vote: Motion that AMENDMENT NO. HB078203.AKL BE ADOPTED carried 12-0 by voice vote with SEN. LASLOVICH voting aye by proxy.

Motion: SEN. MCGEE moved that HB 782 BE CONCURRED IN AS AMENDED.

SEN. MCGEE explained that he had been asked by Mr. Bloomquist to provide the Committee with an amendment. He further stated that he did not have any idea what the purpose of the amendment was, however, he would do as he had been asked.

Motion: SEN. MCGEE moved that AMENDMENT NO. HB078204.AKL BE ADOPTED.

Discussion:

SEN. ELLINGSON stated he was puzzled by the amendment. He further stated that Mr. Bloomquist had provided everyone with a list of amendments he would like on the bill and this particular amendment was not on that list. He went on to say that because this amendment was not on the list he would feel uncomfortable supporting the amendment.

SEN. MCGEE asked if he could ask John Youngberg if he had any knowledge about why Mr. Bloomquist had requested the amendment.

Mr. Youngberg stated that this amendment addressed the concerns of Mr. Macklia and another attorney.

SEN. MCGEE withdrew his motion to adopt AMENDMENT NO. HB078204.AKL.

SEN. O'NEIL expressed his displeasure at the amendment being withdrawn.

SEN. CURTISS stated that she had problems with the first amendment on Page 1 between Lines 10 and 13. She went on to say when the adjudication bill was originally passed the major premise was that existing water rights would not be jeopardized by any further actions. She continued saying that she would not be able to support the bill with the amendment on HB 782.

Vote: Motion that HB 782 BE CONCURRED IN AS AMENDED carried 10-2 by voice vote with SEN. CROMLEY and SEN. CURTISS voting no with SEN. LASLOVICH voting aye by proxy.

CHAIRMAN WHEAT will carry HB 782 on the floor of the Senate.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 9.6}

SEN. CROMLEY raised the issue of HB 747 and asked what they would have to do to reconsider the bill.

The Committee discussed whether or not they would be able to reconsider HB 747. **Ms. Lane** stated that HB 747 had an April 6 transmittal deadline. It was then mentioned that would only apply to the bill if they were to amend it.

Motion: **SEN. MANGAN** moved to RECONSIDER THE MOTION on HB 747.

Discussion:

CHAIRMAN WHEAT explained that HB 747 was the bill that would grant immunity for the school districts, employees and their agents related to building projects.

SEN. MANGAN stated that HB 747 would allow the building program to continue in Billings and give some comfort in Great Falls, Missoula, Helena and the other communities who conduct these programs. He went on to say that he knew how the Chairman feels about immunity bills, but this is a good bill.

It was determined that there had been no action taken on the bill as it had received a tied vote, therefore, they did not need to vote to reconsider.

EXECUTIVE ACTION ON HB 747

Motion: **SEN. MANGAN** moved that HB 747 BE CONCURRED IN.

Discussion:

SEN. CURTISS expressed her support for HB 747 saying she felt it was a good idea.

SEN. SHOCKLEY stated that he liked the bill.

SEN. CROMLEY commented that maybe they could amend it to make it better. He was reminded that they could not amend it because of the transmittal deadline.

SEN. O'NEIL stated he did not understand why the school district would need immunity and why they would not be liable for repairs if something had been put together incorrectly. **CHAIRMAN WHEAT** responded that the Judiciary Committee had passed a bill last session called "The Right to Cure". He went on to say that the bill had dealt with this very issue.

CHAIRMAN WHEAT stated the bill looks good on the surface but it really did not do anything. He went on to say they could build the homes and the homes were being constructed under the supervision of a trained professional. He further stated they don't sell the home until it has been completed and when the people buy the homes, they enter into a contract with the understanding of who built the home, that they will have the right to have it inspected, and have the right to have any defects corrected. He concluded saying that he felt the bill did absolutely nothing and that in the 27 plus years of operation they had never had a claim filed against them.

Vote: Motion that HB 747 BE CONCURRED IN carried 7-5 by roll call vote with SEN. ELLINGSON, SEN. LASLOVICH, SEN. O'NEIL, SEN. PEASE, and SEN. WHEAT voting no with SEN. LASLOVICH voting no by proxy.

SEN. MANGAN will carry HB 747 on the Senate floor.

{Tape: 1; Side: A; Approx. Time Counter: 9.6 - 17.4}

ADJOURNMENT

Adjournment: 4:49 A.M.

SEN. MIKE WHEAT, Chairman

MARI PREWETT, Secretary

MW/mp

Additional Exhibits:

EXHIBIT ([jus73aad0.PDF](#))